

1 attendance. For example, without scheduled start times for
2 employees who Rahmani claims were also regularly tardy or absent,
3 it is not sufficiently clear from the record that Rahmani was
4 singled out for discipline in this area. Accordingly, briefing
5 should address whether Rahmani was singled out for discipline in
6 the areas of punctuality and attendance.

7 Second, the record is ambiguous whether similarly
8 situated, non-Middle Eastern sales associates in Rahmani's
9 department were treated more favorably than Rahmani in terms of
10 meeting NMG's Sales Productivity Standard (SPS). The court is
11 inclined to overrule NMG's objection to the admissibility of SPS
12 tracking forms for Susan Kawashima, Mia Admana and Lynda Lovell.
13 On the other hand, the court is inclined to sustain NMG's objection
14 to paragraph 11 of Rahmani's declaration, Doc #40, inasmuch as
15 Rahmani's declaration fails to lay a foundation for her personal
16 knowledge of the ethnicity of co-workers who, according to Rahmani,
17 "missed their goals more often than I and yet were not terminated."
18 Accordingly, briefing should address whether there is any
19 additional evidence in the record to support the fourth element of
20 Rahmani's prima facie case and, if not, whether this evidentiary
21 insufficiency could be cured by allowing Rahmani to submit a
22 supplemental declaration.

23 Finally, the record is unclear regarding precisely
24 whether and how NMG applied the \$700,000/year exception to SPS in
25 the prospective manner contended by Rahmani. For example, if the
26 exception was applied prospectively, how did NMG calculate whether
27 a sales associate was "on track" or "trending to" sell the minimum
28 annual threshold? And even assuming that the exception was applied

1 to Rahmani in a manner different from her colleagues (Kawashima,
2 Admana and Lovell), is there not a legitimate explanation for this,
3 such as that Rahmani was already on probation before the exception
4 was implemented in September 2003?

5 In addition to shedding light on portions of the current
6 record that bear on the foregoing issues, briefing should address
7 whether further discovery might be fruitful. Any proposal for
8 further discovery, however, shall describe precisely the scope of
9 such discovery and why it is reasonably likely to cure the above-
10 described deficiencies of the current record.

11 Rahmani's brief shall be filed on or before April 7,
12 2006, and shall not exceed fifteen pages. NMG's reply brief, if
13 any, shall be filed on or before April 14, 2006, and shall not
14 exceed ten pages.

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16 SO ORDERED.

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19 VAUGHN R WALKER

20 United States District Chief Judge
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